

S/N 09/186817



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Mark Rapaich

Examiner: Lun-See Lao

Serial No.: 09/186817

Group Art Unit: 2643

Filed: November 5, 1998

Docket: 450.183US1

Title: MULTIPLE AUDIO DACs WITH PC COMPATIBILITY

PETITION TO WITHDRAW HOLDING OF ABANDONMENT
BASED ON FAILURE TO RECEIVE OFFICE ACTION UNDER 37 CFR § 1.181(a)
OR, IN THE ALTERNATIVE, PETITION TO REVIVE ABANDONED
APPLICATION UNDER 37 CFR § 1.137(b)

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Commissioner for Patents
P.O.Box 1450
Alexandria, VA 22313-1450

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As provided in MPEP § 711.03(c), the undersigned attorney as Representative for the Applicant believes that the above-identified application was improperly abandoned by the Office, and hereby petitions for withdrawal of abandonment and resetting the time for response, based on the following facts and information:

1. In response to Applicant's inquiry to the Office regarding the status of this case, on September 10, 2003, the Office faxed Applicant a copy of an Office Action dated December 17, 2002. The 6-month statutory period for response to the Office Action expired on June 17, 2003. A Notice of Abandonment has not been received.
2. Upon information and belief, neither Applicant, nor Assignee Gateway, Inc., nor its undersigned Representative received the Office Action dated December 17, 2002 prior to June 17, 2003, which was the end of the statutory period for response. The Office Action should have been addressed to Gateway, Inc., the Assignee.
3. Assignee Gateway, Inc. and Applicant's undersigned representative have made a search of the file jacket and docket records of the above-identified application. The search of both the file jacket and the docket records indicates that the Office Action dated December 17, 2002 was not received prior to June 17, 2003. A copy of the docket record for the six months subsequent to December 17, 2002, is attached hereto as an Exhibit entitled "Docketing System Notes of Gateway, Inc. for USSN 09/186,817, for the period 7/23/01 through 9/10/2003".

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4. The attached Exhibit entitled "Docketing System Notes of Gateway, Inc. for USSN 09/186,817, for the period 7/23/01 through 9/10/2003" is the record or report where the nonreceived Office communication would have been entered had it been received.

5. No fee is believed due for this petition, but if a fee is required, it may be charged to Deposit Account No. 50-0439.

6. Although Applicant's Representative believes this Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action under 37 CFR § 1.181(a) to be correct and appropriate, he also states that any error inadvertently made by him which resulted in abandonment of this application was unintentional. In the event it is deemed that a Petition to Revive Abandoned Application under 37 CFR § 1.137(b) is required to revive this application, such petition is hereby made, and any fees required may be charged to Deposit Account No. 50-0439.

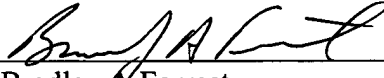
7. This petition is also accompanied by a response to the Office Action dated December 17, 2002.

Respectfully submitted,

MARK RAPAICH

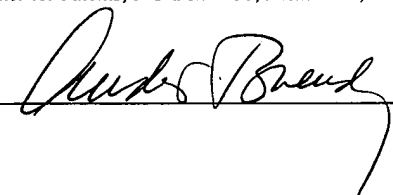
By his Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(612) 373-6972

Date 11/24/2003 By 
Bradley A. Forrest
Reg. No. 30,837

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner for Patents, P.O.Box 1450, Alexandria, VA 22313-1450 on this 24 day of November, 2003.

Candis B. Buending
Name


Signature

NOV 28 2003

Patricia - [Case - Patent, United States]

File Edit Actions Financial Report Window Help

Entry Type: Case No. P1218US00

Basic Parties **Diary** Actions Class/Citation Designation Documents

Information

Case No: P1218US00 Type: Priority Founding Service Level: Normal Team: NSC

Catchword: MULTIPLE AUDIO DACS WITH PC COMPATABILITY Notes: 7/10

Matter ID: Old Case ID: 97-0373 Remark:

Diary Field	Number	Date
Date Created		12/12/1997
Application Date		11/5/1998
Application No.	09/186817	
Art Group No.	2643	
Examiner's name	Lun S. Lao	
Foreign Filing Decision	EP, PCT, JP	
IDS Filed		11/5/1998
1st OA Mail Date		4/25/2002
1st OA Resp. Filed		9/25/2002
Supplemental IDS Filed		8/15/2001

Diary Field: No. / Text:

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Family Country Coverage Open Sa

Patricia

Start Patricia [Case - Paten...

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Ms. Gayle Bekish
Paralegal, Patents
Gateway, Inc.
610 Gateway Dr., Y-04
N. Sioux City, SD 57049

T. 800-846-3612 ext. 27432
F. 605-232-2612
E. gayle.bekish@gateway.com

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Exhibit A

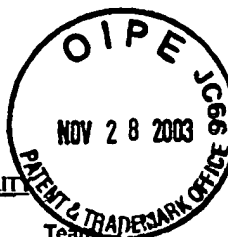
9/17/2003

Case Summary: Patent

Printed: 10/7/2003

Case Number: **P1218US00**Catchword: **MULTIPLE AUDIO DACS WITH PC COMPATABILITY**

Date of Order:

Application Type: **Priority Founding**Service Level: **Normal**Matter ID: **97-0373**

Team:

Team Leader:

Last Edit:

Country Name:

NSC Patent

Scott Richardson

9/29/2003

United States

Category:

Verified after Conversion

Title:English **Multiple Audio DACs With PC Compatability**

Name Type	Name No.	Name	Address	Telephone	Telefax
Applicant/Assignee	10505	Gateway, Inc.	14303 Gateway Place Poway California 92064 United States	858-848-3401	858-848-2671
Inventor	10338	Mark X. Rapalch	23176 concord ave Westfield IA 51062 United States	21649 712 568 3391	
Former Counsel	10116	Inhouse	United States		
Outside Counsel	10110	Schwegman, Lundberg, Woessner	1600 TCF Tower 121 South Eighth Street Minneapolis, MN 55402 United States bforrest@slwk.com	612-373-6900	612-339-3061
Examiner	79643	Lun S. Lao	USPTO Commissioner of Patents & Trademarks Washington, DC 20231 United States	703.305.2259	703.872.9314
Gateway Office	10612	North Sioux City	610 Gateway Drive, MD Y-04 North Sioux City South Dakota 57049 United States	605-232-1967 27432	605-232-2612

ReferenceAgent's Ref **450.183US1****Country Summary**

EP JP PC US

EP: DE FR GB IE

PC: EP JP

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NOV 28 2003

PATENT & TRADEMARK OFFICE 9903

Printed: 10/7/2003

Case Summary: Patent**Diary Information**

Date Created 12/12/1997
Application No. 09/186817
Examiner's name Lun S. Lao
IDS Filed 11/5/1998
1st OA Resp. Filed 9/25/2002

Application Date 11/5/1998
Art Group No. 2643
Foreign Filing Decision EP, PCT, JP
1st OA Mail Date 4/25/2002
Supplemental IDS Filed 8/15/2001

End of Case Summary

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Notes for Case Summary: P1218US00
Printed: 10/7/2003



Note: 1, Last edited: 7/23/2001 00:00:00, By: SU

10/27/98 - Recd. final papers.

3/17/99 - Recd. a copy of Assignment. Assignment was recorded on November 5, 1998 at Reel 9572 at Francis 0680-0682.

4/19/00 filed IDS and form 1449

2/21/01 mailed the change of name recordation cover sheet to uspto

Note: 2, Last edited: 7/23/2001 00:00:00, By: SU

9/14/00 recd an email from clow stating no response to written opinion is necessary at this time

9/18/00 sending via fax the C&A and the letter from OC to JHL

9/19/00 recd a copy of a ltr from moser to slw to advice no written opinion is necessary for r

Note: 3, Last edited: 7/23/2001 00:00:00, By: SU

7/10/98 - Received first draft from Schwegman.

7/28/98 - Received inventor's comments.

Original action base date was May 1, 1998.

Note: 4, Last edited: 9/24/2001 13:03:09, By: GB

9/24/01 gmb - call the customer service for group 2600 to get status on this case - was told that this case was number 31 on the docket of examiner Xu Mei and we should be hearing from the examiner by Feb. 2002.

Note: 5, Last edited: 9/25/2002 12:24:48, By: GB

9/25/02 gmb - sent the oa to counsel for filing

Note: 6, Last edited: 9/9/2003 14:06:37, By: SR

From: Richardson, Scott

Sent: Tuesday, September 09, 2003 3:04 PM

To: 'Bradley Forrest'

Cc: Bekish, Gayle

Subject: 450.183US1 // P1218US00 >> Gateway did not receive a final Office Action

Our ref. P1218US00

Your ref. 450.183US1

U.S. serial no. 09/186,817

Hi Brad,

Further to our telephone conversation earlier this afternoon, here is my assessment of the situation. As you mentioned in the earlier telephone message you left for me, Examiner Lun Lao called you to say that the 09/186,817 (P1218US00) had gone abandoned for a failure to respond to an Office Action that he purportedly sent to Gateway. Following your telephone message to me, I called Examiner Lao to inquire about the situation, and inform him that we had not yet received his final Office Action. I told Examiner Lao that you were prosecuting the application

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and would follow up with him.

Please contact Examiner Lao and determine the best course of action for proceeding. If you can have him reissue the final Office Action, I would agree to filing a continuation-type application (probably an RCE) to further prosecute the application. If you feel some other course of action is warranted, please let me know.

Very best regards,

Scott

Scott Charles Richardson

Staff Counsel, Patents

Gateway, Inc.

Telephone: 605.232.1967

Facsimile: 605.232.2612

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Note: 7, Last edited: 9/10/2003 15:08:16, By: SR

450.183US1 // P1218US00 >> Gateway did not receive a final OfficeFrom: Richardson, Scott
Sent: Wednesday, September 10, 2003 3:52 PM
To: 'Bradley Forrest'; Bekish, Gayle
Subject: FW: 450.183US1 // P1218US00 >> Gateway did not receive a final Office

Hi Gayle, Hi Brad,

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Notes for Case Summary: P1218US00
Printed: 10/7/2003



Further to my email of yesterday regarding the application we did not receive a final office action in (P1281US00) and the telephone message from Brad a few minutes ago, even though we have not received a Notice of Abandonment the case is already abandoned as a matter of law, as of the day after the six month due date. Here is how we should proceed:

Ø Brad, please prepare a Telephone Interview Summary that references your telephone conversation with Examiner in which he asked whether we had filed a response. This is the first time we learned that he had sent out an Office Action. (What was the date of the Office Action?) We will file the Telephone Interview Summary with your Petition to Withdraw Abandonment.

Ø Brad, please prepare a Petition for a Withdrawal of Abandonment pursuant MPEP 711.03(c)II (as per Brad Forrest's suggestion). Also prepare the affidavit for Gayle/Scott to sign stating that the Office Action was not received. FYI, I will be out of the office after this coming Monday-so it would be best to have it done by then.

Ø Gayle, please print out the Patrix docket report for month in which the Office Action would have shown up, to demonstrate that the P1281US00 Office Action was not received. Also print out the Patrix "diary" section for P1281US00. These items will be filed in support of Brad's Petition.

Once we pull these things together (next week), Brad can file the Petition and we're back in business.

Very best regards,

Scott

Scott Charles Richardson

Staff Counsel, Patents

Gateway, Inc.

Telephone: 605.232.1967

Facsimile: 605.232.2612

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Notes for Case Summary: P1218US00
Printed: 10/7/2003



-----Original Message-----

From: Richardson, Scott
Sent: Tuesday, September 09, 2003 5:23 PM
To: Bekish, Gayle
Subject: FW: 450.183US1 // P1218US00 >> Gateway did not receive a final Office

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Hi Gayle,

This is a patent application that the PTO says is now abandoned. However, we did not receive a final Office Action from the PTO, so we should be able to traverse the abandonment, as per Brad's comments below.

Let's see if we can pull this stuff together for Brad. We need to send a listing (a Patrix print-out) of the items received from the Patent Office for one week before and after we expected to receive the final Office Action. Also, we will need to work up a paragraph or two outlining our procedure for receiving, docketing, and entering PTO mail into our casefiles.

Very best regards,

Scott

Scott Charles Richardson

Staff Counsel, Patents

Gateway, Inc.

Telephone: 605.232.1967

Facsimile: 605.232.2612

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Printed: 10/7/2003



-----Original Message-----

From: Bradley Forrest [mailto:BForrest@slwk.com]
Sent: Tuesday, September 09, 2003 5:06 PM
To: 'Richardson, Scott'
Cc: Rodney Lacy; Candy Buending; 'bforrest@slwkclincnt.com'
Subject: 450.183US1 // P1218US00 >> Gateway did not receive a final Office

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Hi Scott, the Examiner said that he will hold off on the notice of abandonment, and that we should submit proof that we did not receive the office action. Perhaps an affidavit from you or Gayle indicating that she processes all the mail from the USPTO, and that she does not recall seeing it. We could also throw in that the first thing she does every time when receiving mail from the USPTO is enter it into the docket system, and that the docket system does not show an entry. The mail then goes to you, and you did not receive it, and it is not in the file. Perhaps check for loose papers, and in files that show activity about the time that the office action should have come in, and say it was not found. The Examiner said, the more facts, the better.

I asked him to fax a copy of the office action to me, and he said he could not do it. I did not argue. Images are now available on PAIR, and I'll see if we have the ability to access them. Brad.

Bradley A. Forrest

Schwegman, Lundberg, Woessner & Kluth, P.A.

1600 TCF Tower, 121 S. 8th St., Minneapolis, MN 55402 USA

tel: 612-373-6972 fax: 612-339-3061 <http://www.slwk.com>

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